NATIONAL REPUBLICAN.

PERSONAL LIBERTY LAWS.

We publish below a letter upon this subject, addressed by one of the editors of this paper, to a distinguished citizen of Maine:

WASHINGTON, *Dec.* 20, 1860.

Rufus Dwinel, Esq., Bangor, Maine:

DEAR SIR: Your favor of the 9th instant, of which I have already hurriedly acknowledged the receipt, deserves the more extended reply which I now propose to give to it, and which has only been delayed so long by the great pressure upon my time.

I am exceedingly gratified to find that the "personal liberty" laws of Maine are not fairly open to some of the objections popularly urged against them; that they neither nullify, or propose to nullify, any act of Congress; that they do not conflict with the provisions of the Federal Constitution, as expounded by the Supreme Federal Judiciary; and that, although it is not probable that any practical good is accomplished by them, neither do they involve any practical mischief which would be likely to raise the question of revising them, except in a critical condition of affairs and a feverish state of the public mind, which make it the dictate of prudence to correct, so far as consistent with the maintenance of essential principles, anything which is liable to misconstructions which may be hurtful, and even dangerous.

Of the Revised Statutes of 1857, chapter 80, section 53, is in the following words:

"No sheriff, deputy sheriff, coroner, constable, jailer, justice of the peace, or other officer of this State, shall arrest or detain, or aid in so doing, in any prison or building belonging to this State, or to any county or town, any person, on account of a claim on him as a fugitive slave. Any of the said officers violating any of the aforesaid provisions, or aiding or abetting any person claiming, arresting, or detaining, any person as a fugitive slave, shall forfeit a sum not exceeding one thousand dollars for each offence, to the use of the county where it is committed, or be imprisoned less than one year in the county jail."

The marginal reference is to the act of March 17, 1855, which consists of four sections, and which I here copy entire:

"SEC. 1. No judge of any court in this State, and no justice of the peace, shall hereafter take cognizance of or grant a certificate in cases arrising under the act of Congress passed September 18, 1850, or the act to which that was additional, entitled 'an act respecting fugitives from justice,' to any person who claims any other person as a fugitive slave within the jurisdiction of this State.

"SEC. 2. No sheriff, deputy sheriff, coroner, constable, jailer, or other officer of this State, in his official capacity, shall hereafter arrest or detain, or aid in arresting or detaining, in any prison or building belonging to this State, or any county, city, or town thereof, of any person, by reason of his being claimed as a fugitive slave.

"SEC. 3. Any justice of the peace, sheriff, deputy sheriff, coroner, constable, or jailer, who shall in his official capacity directly or indirectly offend against the provisions of this act, or aid and abet any person claiming any other person as a fugitive slave, in the arrest and detention of such person so claimed as a fugitive, shall forfeit a sum not exceeding one thousand dollars for every such offence, to the use of the county where said offence is committed, or shall be subject to imprisonment not exceeding one year in the county jail.

"SEC. 4. Nothing in this act shall be construed to hinder or obstruct the marshal of the United States, his deputy, or any officer of the United States, from executing or enforcing the laws of the United States referred to in the first section of this act."

The revision of our statutes in 1857 was a revision merely, as distinguished from codification; that is to say, it condensed and simplified existing legislation, without going into new legislation.

In the matter in hand, chapter 80, section 53, of the revision, is manifestly intended to condense, without changing, the act of March 17, 1855. In truth, it does nothing more than that, and yet it has so happened, that the omission of the fourth section, and of a phrase in the other sections, both really nothing more than surplusage, has led to important misapprehensions.

The fourth section was only added to the act of 1855, by way of superabundant caution, and to negative the erroneous inference which might be carelessly drawn, that the first three sections intended any contravention of the acts of Congress in respect to fugitive slaves. As the provisions in those first three sections are entirely consistent with the national legislation on the same subject, the *caveat* in the fourth section is, in strictness, unnecessary, and it was naturally dropped in a revision, of which a leading object was condensation by the lopping off of all superfluous matter.

The phrase of the act of 1855, "*in his official capacity*," applied to the prohibited acts of justices of the peace &c., is omitted in the revision, and for the same reason which induced the dropping of the fourth section. The phrase is the merest surplusage, as no lawyer would hesitate to construe chapter 80, section 53, just as if the omitted phrase had been retained. When a justice of the peace is commanded not to issue a warrant, when a sheriff is commanded not to arrest, and when a jailer is commanded not to hold in prison, the prohibition is necessarily to each "*in his official capacity*," as it is only in that "*capacity*" that the prohibited things are possible to be done.

I happen to know, however, that the omission of this most unnecessary phrase, "*in his official capacity*," has led to an impression, more or less general, that the numerous citizens holding commissions as justices, sheriffs, and constables, are prohibited, as individuals, from doing anything in execution of the act of Congress of September 18, 1850, and especially from doing duty as a part of the *posse comitatus*, authorized to be summoned by United States marshals in certain cases under that act. Manifestly, this is a mistake. The Legislature of Maine have not undertaken to prohibit any citizen from discharging, as a citizen, any duties required by Congress. They have only undertaken to prohibit certain officers from doing certain things as officers.

This legislation of 1855, consolidated in the revision of 1857, as it does not conflict with any acts of Congress, so it does not conflict with the Federal Constitution, as expounded by the Supreme Court of the United States. It is, in fact, in exact harmony with the decisions of that court, in the famous case of Prigg, argued here in 1842, and reported 16 Peters, 539.

It was settled in that case, that as the right of reclaiming fugitives from labor is a right arising exclusively under the Constitution of the United States, it is the exclusive duty of Congress to provide remedies for enforcing the right, and the majority of the court maintain that this exclusiveness is so entire, that legislation by the States, even in aid of acts of Congress upon the subject, is not admissible, because it might result that the remedies for the recovery of fugitives might be greater in some States than in others.

The act of Congress of 1793, for the recovery of fugitives, which was the act existing at the time of the decision in Prigg's case, authorizes the certificate to warrant the return of fugitives from labor, to be given by any United States judge, or by "*any magistrate of a county, city, or town corporate*," where such fugitives might be arrested. But although the act of 1793 thus gave jurisdiction to State magistrates, the court decided that such jurisdiction might be declined by such magistrates, at their option, and that they might be prohibited by the State Legislatures from exercising it.

I make the following extracts from the opinion of the court in Prigg's case, drawn up by Judge Story, as sufficiently indicating its general drift.

The court say:

"The clause relating to fugitive slaves is found in the National Constitution, and not in that of any State. It does not point out any State functionaries or any State action to carry its provisions into effect. The States, therefore, cannot be compelled to enforce them, and it might well be deemed an unconstitutional exercise of the right of interpretation, to insist that the States are bound to provide means to carry into effect the duties of the National Government, nowhere delegated or intrusted to them by the Constitution. On the contrary, the natural if not the necessary conclusion is, that the National Government, in the absence of all positive provisions to the contrary, is bound, through its own proper departments, legislative, executive, or judiciary, as the case may require, to carry into effect all the rights and duties imposed upon it by the Constitution."

And again, the court say:

"The act of 12th February, 1793, relative to fugitive slaves, is clearly constitutional in all its leading provisions; and, indeed, with the exception of that part which confers authority on State magistrates, is free from reasonable doubt or difficulty. As to the authority so conferred on State magistrates, while a difference of opinion exists and may exist on this point, none is entertained by the court, that State magistrates may, if they choose, exercise the authority, unless prohibited by State legislation."

In his separate opinion given in this case, dissenting from some of the views of the majority of the court, Chief Justice Taney says:

"The State officers mentioned in the law are not bound to execute the duties imposed upon them by Congress, unless they choose to do so, or are required to do so by a law of the State; and the State Legislature has the power, if it thinks proper, to prohibit them."

It is really by no means clear that State courts and magistrates have even the optional right to assume the jurisdiction given by the act of 1793, or by the supplemental act of 1850. It is maintained, with great show of argument and authority, that judicial powers, under the Constitution of the United States, can only be given to the courts of the United States, and to judges appointed by the President and Senate.

In the case of Ely *vs.* Peck, 7 Conn. Reports, 239, which was a case of a deserting mariner, under an act of Congress which, in terms, gave jurisdiction to the State courts, the Connecticut Supreme Court declined the jurisdiction.

In the old case of the United States *vs.* Lathrop, 17 Johnson, 4, which was a suit under the act of Congress of 1813, for a penalty for selling spirits without paying a license-duty imposed as a war tax, and which act, in terms, gave jurisdiction to the State courts, not only did the New York Supreme Court decline the jurisdiction, but they did it upon the ground, so far as a majority of the court were concerned, that the State courts had no right to accept, if even so inclined, jurisdiction in cases arising exclusively under acts of Congress.

It is, at any rate, doubtful if State courts and magistrates ever had any right to take jurisdiction under the acts of Congress of 1793 and 1850; but there is certainly no doubt at all, both that they may, if they see fit, rightfully decline it, and that they may rightfully be prohibited, by State law, from exercising it.

It will not, I apprehend, be doubted that the decision in Prigg's case was made in the interest and at the instance of the institution of slavery. There were respectable opinions, and even eminent opinions, such as that of Mr. Webster, which favored the doctrine that the surrender of fugitives from labor was only a duty imposed upon the States, and to be performed, of course, according to the discretion of the States, in matters of detail. Considering that Congress will always be more likely to make efficient provisions upon the subject than the free States, to whom the surrender of fugitives from labor can never possibly be anything but an odious duty, it was clearly for the advantage of slaveholders, that the jurisdiction of Congress should be declared to be as peremptorily exclusive as it was declared to be in Prigg's case.

The decision in that case created great surprise when it was announced. It was not in harmony with the previously existing popular notions upon the subject, and there were special circumstances which gave it an aspect of harshness and abruptness. The case itself arose in Pennsylvania, under a law of that Commonwealth passed in 1826, not to embarrass the rendition of fugitives from labor, but with an exactly opposite intent. The Pennsylvania law of 1826 was passed at the special instance and with the approbation of commissioners of the State of Maryland, appointed to procure additional friendly legislation from a friendly neighbor. With the lapse of time, new views of policy had arisen, and it is to these new views that the decision in Prigg's case is unquestionably to be ascribed.

I well recollect, what it was in the line of my then occupation as an editor to notice, that consequent upon the decision in Prigg's case, the sentiment became common in the free States, that if the States had no duty to perform in the premises, and especially if even their right to act in aid of acts of Congress was denied, they would best consult their own dignity, and at the same time fail in no obligation, if they retired altogether, and withdrew their officials altogether, from the business of returning fugitives from labor. It is thus truly this decision in Prigg's case, and not any intent to evade constitutional duty, which has caused the legislation of the character of the Maine act of 1855, which is now complained of. This is certainly true of Pennsylvania, which in 1847 enacted a law the same in substance as the law enacted in Maine eight years afterwards.

This Pennsylvania law prohibits all State judges and magistrates, from taking cognizance of any fugitive slave case under the law of Congress of 1793, or under any other act of Congress, under a penalty of not less than five hundred nor more than one thousand dollars. It also declares that "*it shall not be lawful to use any jail or prison of this Commonwealth, for the detention of any person claimed as a fugitive from servitude or labor*," and imposes upon any jailer offending against this provision the three-fold penalty of a fine of five hundred dollars, of removal from office, and of incapacity to hold the office of jailer thereafterwards "*during his natural life*."

I am advised by gentlemen who were in public affairs in Pennsylvania, and by a conspicuous member of the Pennsylvania Legislature of 1847, that the legislation of that year was very little influenced by abolition sympathies, but mainly by a feeling of wounded State pride and susceptibility, in this, that laws passed at the special instance of a slaveholding neighbor had been set aside as unconstitutional, in proceedings commenced by this same neighbor under a subsequent change of views. This law of 1847 was approved by Governor Shunk, who was, in Democratic Nationality, a Hebrew of the Hebrews, and has survived all the mutations of party ascendency, during a period of thirteen years, in a State at no time suspected of abolition tendencies. It has not only escaped repeal, but has escaped even complaint, until the immediate present time. Even that eminent citizen of Pennsylvania, the President of the United States, who has been so long in a position to exercise a commanding influence in the public councils of that State, is not known, or believed, ever to have advised any alteration of this law of 1847.

Some of the legislation of some of the free States is undoubtedly open to fair censure, but no such legislation as that of Maine can, without a monstrous abuse of terms, be put into the category of nullificatfon, or be made the basis of such retaliatory movements as are threatened from Georgia and elsewhere.

The only other law of Maine upon this subject is that passed at the regular session of the Legislature in 1857, and embraced in the revision of that year, being chapter 79, section 20, of the revised statutes of 1857, and being in the words following:

"When he (the county attorney) is informed that any person has been arrested in his county, and is claimed as a fugitive slave, under the provisions of any act of Congress, he shall immediately repair to the place of his custody, render him all necessary legal assistance in his defence, and summon such witnesses as he deems necessary therefor, and their fees, and all other necessary legal expenses therein, shall be paid by the State."

I refer to this provision, rather to omit nothing relating to the subject, than because I apprehend that anybody does or can object to the furnishing of "*legal assistance*," at the expense of the State, to any person threatened with the loss of liberty and with transportation out of the State. It is analagous to our constitutional provisions, which secure legal counsel and compulsory process for witnesses to everybody charged with a capital offence, and to the immemorial practice of our courts in assigning counsel to persons charged with any criminal offence, and unable themselves to procure counsel. This law of 1857, considering the generally humble and destitute condition of the persons who are liable to be claimed as fugitives from labor, could not, in any State in which such claims are likely to be made, be regarded as anything more than a tender and provident discharge of the most sacred of duties, that of protecting the rights of the weak and helpless.

Having thus endeavored, my dear sir, to vindicate my native and honored State from the charge of violating her Federal duties, a task which has happily proved as easy as it has been grateful, I proceed to give you some of the grounds of my most earnest conviction, that it is now the patriotic duty of Maine, arising under a new emergency of affairs, and implying in its discharge no condemnation of the past, to do her part, by unmistakable acts of legislation, towards removing the deplorable error, that the free States have become unwilling to respect the constitutional rights of the slave States.

Considering that there has been but one instance of the attempted capture of a fugitive slave during the forty years of the existence of Maine as a State, that it may be presumed that such instances will always be exceedingly rare, and that, even when they do occur, the fugitive loses, rather than gains, by being denied the possibility of a trial by State magistrates, and by being turned over to commissioners under the act of Congress of 1850, who hold office by a tenure independent of local sympathies, it will not be maintained, by men who mean to be candid, that either the intent or effect of the act of 1855 is the better to secure personal liberty. That act accomplishes no such object, and aims at no such object, but is merely a legislative method of making the declaration, that, as Maine is not bound to do anything for the rendition of slaves, so she does not mean to do anything for the rendition of fugitive slaves, but washes her hands scrupulously clean of the whole thing. That is the sole effect of the act, and it is not treating the subject with frankness, to attempt to maintain that the act had any other design.

Now, the declaration involved in this act is one which Maine might constitutionally make at any time, and which the circumstances of the period immediately following that violation of good faith, the repeal of the Missouri compromise, well justified her in making, the true point of surprise being, not that she went so far, but that she did not go farther. Nevertheless, in the evil times upon which we have fallen, what was done is unfortunate, because the abrupt letter of the act can be easily used for inflammatory purposes, where the explanation and justification are too tedious to get a hearing.

Precisely what is practicable to be done, or what it is expedient to attempt to do, can be better judged of on the spot than here. A repeal of the act referred to may conflict with the public sense of consistency, and may not be so advisable as some other remedial measure. Not doubting that wiser expedients will occur to others, I yet venture to suggest, as one which has occurred to me, that the Governor and Council be authorized and required to make ample indemnity in money to any person who shall be prevented by popular violence from recapturing a fugitive slave in Maine by legal methods. It is hardly within the compass of probability that such a provision would ever take a dollar from our treasury, but, whatever it may cost, the principle, which is familiar and universal in international relations, is sound in itself. Governments ought to be held responsible to foreigners for the preservation of internal order, and to indemnify them for the consequences of disorder.

Such a provision, while it would wound no enlightened conscience, would be a legislative declaration of the resolute good faith of Maine to the compacts of the Union, of inestimable value at the present crisis. It would meet the complaints as to the execution of the fugitive slave law, at the precise point upon which those complaints are now concentrated, viz: the obstructions to the law arising from mob violence.

While the existing most serious attempt to subvert our Government does not really originate in any grievances connected with the slavery question, it is undeniable that honest alarms for the safety of their domestic institutions, from the condition of Northern sentiment, do exist among the people of the South. The disunionists *per se* are beyond the reach of any remedy except force, or the resolute display of force; but it is still possible to strengthen the hands of the friends of the Union at the South, by such considerate action at the North as will enable them to show that the alarms to which I refer are unfounded. The difficulties with which these noble men are contending can only be realized by those who receive the vivid details from their own lips. It is they who are struggling against adverse winds and adverse tides. It is upon them that the brunt of the battle falls. Their heroic efforts deserve our admiration and sympathies; and just feeling, as well as sound policy, urges us to hasten to their relief with all the succors at our command. And who can overrate the assistance in their struggle with nullification, to be derived from the pledge, voluntarily given by the free States, to make indemnity for any violent invasion, within their limits, of the constitutional rights of slaveholders?

Nor do I hesitate to say, that while the preservation of the Union may depend upon that strengthening of the friends of the Union at the South, which can only be expected from such action at the North as will effectually repel the suspicion that the constitutional rights of the South are menaced with attack, it is equally clear, that the paramount object of excluding Slavery from the Territories will fail to be accomplished, if the dominant party at the North loses the support of the class of persons who will insist that the rights of slaveholders in the States shall be respected. There is such a thing as losing all by attempting too much; and it is as true in politics as it is in war, that concentration is the best guaranty of success. The exclusion of Slavery from the Territories is the great good to be attained; and to be strong enough to insist upon that without compromise—and no compromise has been or will be proposed which is anything but a substantial abandonment of the whole—the North must be kept united; and while no other basis of such union ought to be desired anywhere, none other is practicable as a matter of fact, considering the temper, traditions, and fixed ideas of the central States, than one which shall include the scrupulous fulfilment, in letter and spirit, not grudgingly, but generously, of every duty which the North really owes to the South under the Constitution of the United States.

Since it is neither to be expected, or desired, that difficulties which have assumed too much the aspect of a struggle between two sections of the Union, shall be terminated by a clear victory for the one and a clear defeat for the other, the character of the result depends upon the points to be yielded, and the points to be insisted upon. Every man who is generous, and even every man who is only considerate, will make a large allowance for the passions and exasperation incident to a change of dynasties. If it is wise to build a golden bridge for a flying enemy, it is wise to spare the pride, not of enemies, but of countrymen; and concession, where we can afford to yield, will enable us to be firm where we cannot afford to yield.

Thanking you for your suggestions, in which you perceive that I substantially concur, I remain, my dear sir, very truly your friend,

GEO. M. WESTON.

Prospectus of the National Republican.

Believing that the time has arrived when the great Republican party of the United States ought to be fairly represented in the daily press of the National Metropolis, we have embarked in the enterprise of supplying the citizens of the District of Columbia with a daily publication, under the title of the "NATIONAL REPUBLICAN."

In its political department, this journal will advocate and defend the principles of the Republican party, and endeavor to disabuse the public mind of groundless prejudices which have been engendered against it, by the false accusations of its enemies. Having the utmost confidence that the administration of Mr. Lincoln will be such as to merit our approbation, we expect to yield it a cordial, but not a servile support. In the great issue that is likely to be made with his administration, by the enemies of the Republican party, the people of Washington and the District of Columbia have more at stake than the people of any other portion of our common country. We believe that to support Mr. Lincoln's administration will be synonymous with maintaining the integrity of the Federal Union, against the machinations of those who would rend it asunder. No one can doubt upon which side of this issue the people of Washington will be found, when they come to realize that it is fairly forced upon them. We feel confident, therefore, that in yielding to the administration of Mr. Lincoln a cordial support, we shall have the sympathy of an immense majority of the people of this District and vicinity.

It is not our design, however, to make the *National Republican* a mere political paper. We intend, that as a medium of general and local news, it shall not be inferior to any other journal published in this city. We shall pay particular attention to questions of local policy, and advocate such reforms as we may deem essential to the prosperity of the city, and to the advancement of the moral and material welfare of its inhabitants.

We deem it unnecessary, however, to multiply promises, as the paper will immediately make its appearance, and will then speak for itself.

It will be published every morning, and delivered to city subscribers at six cents per week. Mail subscribers, $3.50 a year, payable in advance.

The publication office is at the corner of Indiana avenue and Second street.

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